



January 17, 2008

SENATE BILL No. 243

DIGEST OF SB 243 (Updated January 15, 2008 4:09 pm - DI yl)

Citations Affected: IC 8-1; IC 8-20; noncode.

Synopsis: Tree cutting by utilities. Requires a utility to follow the standards of the American National Standards Institute in performing any tree cutting activity. Requires a utility to adopt dispute resolution procedures for property owners affected by the utility's tree cutting activity. Requires that the procedures allow affected property owners to appeal any resolution reached to the utility regulatory commission. Requires a utility to give at least 21 days notice of planned tree cutting activity to: (1) the county or municipal executive of the area where the activity will occur; and (2) affected property owners. Prohibits a utility from performing tree cutting activity while a dispute or appeal is pending. Allows a utility to perform tree cutting activity: (1) without giving notice; or (2) while a dispute or appeal is pending; during certain emergencies.

Effective: Upon passage; July 1, 2008.

Breaux

January 8, 2008, read first time and referred to Committee on Rules and Legislative Procedure.

January 16, 2008, amended; reassigned to Committee on Utilities and Regulatory Affairs.

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SB 243—LS 6103/DI 13+



January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 243

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-14.5 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2008]:
- 4 **Chapter 14.5. Tree Cutting Activity by Electric Utilities**
- 5 **Sec. 1. (a) As used in this chapter, "affected property owner"**
- 6 **means the record owner of real property on which a utility plans**
- 7 **to perform tree cutting activity.**
- 8 **(b) The term does not include a property owner that is a**
- 9 **governmental unit.**
- 10 **Sec. 2. As used in this chapter, "tree cutting activity" means:**
- 11 **(1) the trimming or pruning of one (1) or more trees; or**
- 12 **(2) the cutting down and removal of one (1) or more trees.**
- 13 **Sec. 3. As used in this chapter, "utility" refers to any of the**
- 14 **following:**
- 15 **(1) A public utility (as defined in IC 8-1-2-1(a)).**
- 16 **(2) A municipally owned utility (as defined in IC 8-1-2-1(h)).**
- 17 **(3) A corporation organized under IC 8-1-13.**

SB 243—LS 6103/DI 13+



(4) A corporation organized under IC 23-17 that:

(A) is an electric cooperative; and

(B) has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 4. In performing any tree cutting activity, a utility shall follow the tree care and maintenance standard practices set forth by the American National Standards Institute (ANSI).

Sec. 5. (a) Not later than November 1, 2008, a utility shall establish written policies:

(1) providing dispute resolution procedures for affected property owners; and

(2) describing other rights and remedies, if any, that the utility provides to affected property owners.

(b) The policies required under subsection (a)(1) must provide that an affected property owner is entitled to appeal to the commission any resolution of a case reached through the utility's dispute resolution procedures.

(c) Not later than December 1, 2008, a utility shall make the policies established under subsection (a) available to the public through the following means:

(1) A written copy of the policies shall be kept on file and made open to public inspection in every station or office of the utility where payments may be made by customers.

(2) The policies must be included in the informational pamphlet the utility is required to provide to customers under 170 IAC 4-1-18.

(3) The utility shall provide an electronic copy of the policies to the commission. The commission shall make all policies submitted under this subdivision available:

(A) for public inspection and copying at the offices of the commission under IC 5-14-3; and

(B) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(4) The policies shall be available on a publicly accessible web site of the utility.

(5) The policies shall be available through an option to a caller of a toll free telephone number established by the utility. The toll free telephone number required by this subdivision must also provide an option allowing the caller to speak with a representative of the utility.

(d) The policies established by a utility under this section shall

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1 take effect on January 1, 2009.

2 Sec. 6. (a) Except as provided in section 9 of this chapter, not
3 more than ninety (90) days before or less than twenty-one (21) days
4 before performing any tree cutting activity planned to occur after
5 December 31, 2008, a utility shall send notice by United States mail
6 of the planned tree cutting activity to the following:

7 (1) The municipal executive of a municipality in which any
8 part of the tree cutting activity will occur.

9 (2) If any part of the tree cutting activity will occur in an
10 unincorporated area of a county, the county executive.

11 (b) The notice required in subsection (a) must include:

12 (1) maps;

13 (2) a description by street address, if any; or

14 (3) another common description;

15 of the area to be affected by the tree cutting activity. The municipal
16 or county executive shall keep on file and make open for public
17 inspection the materials received under this subsection.

18 Sec. 7. (a) Except as provided in section 9 of this chapter, not
19 more than ninety (90) days before or less than twenty-one (21) days
20 before performing any tree cutting activity planned to occur after
21 December 31, 2008, a utility shall provide the following notice of
22 the planned tree cutting activity to affected property owners:

23 (1) Notice by publication in one (1) newspaper of general
24 circulation in the municipality or county where the tree
25 cutting activity will occur. The notice required by this
26 subdivision must include a description by street address, if
27 any, or other common description of the area to be affected by
28 the tree cutting activity.

29 (2) Notice by United States mail to each affected property
30 owner. The notice required by this subdivision must include
31 the following:

32 (A) A statement of the tree cutting activity planned.

33 (B) A statement that the written policies required by
34 section 5(a) of this chapter are available for public
35 inspection in the public offices of the utility and the office
36 of the commission, as required by section 5(c) of this
37 chapter.

38 (C) The web site address of:

39 (i) the utility; and

40 (ii) the commission;

41 at which the policies required by section 5(a) of this
42 chapter may be viewed, as required by section 5(c) of this

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chapter.

(D) The toll free telephone number required by section 5(c) of this chapter.

(E) A statement that an affected property owner may appeal the planned tree cutting activity through the dispute resolution procedures of the utility. The statement required by this clause must inform the affected property owner of the right to appeal to the commission any resolution reached through the utility's procedures.

(F) A publicly accessible:

(i) toll free telephone number; and

(ii) web site address;

for the office of utility consumer counselor.

(G) A statement that maps, a description by street address, or another common description of the affected area is available for public inspection in the office of the county or municipal executive, as required by section 6(b) of this chapter.

(b) The duty of a utility to provide notice under subsection (a)(2) requires the utility to notify only affected property owners. If a person other than the affected property owner resides on an affected parcel of land, it is the responsibility of the affected property owner to notify the resident of the planned tree cutting activity. A utility does not have a duty to extend any rights, remedies, or policies established under section 5 of this chapter to a resident who is not an affected property owner.

Sec. 8. (a) If an affected property owner wishes to appeal the planned tree cutting activity described in the notice required under section 7(a)(2) of this chapter, the affected property owner must initiate the dispute resolution procedures provided by the utility not later than fourteen (14) days after receiving the notice.

(b) Except as provided in section 9 of this chapter, if an affected property owner has initiated dispute resolution procedures under subsection (a), a utility may not perform any tree cutting activity on the affected property owner's property while the dispute resolution procedures are pending. If the affected property owner wishes to appeal the resolution of the case reached through the utility's dispute resolution procedures, the affected property owner must:

(1) initiate an appeal with the commission; and

(2) notify the utility of the appeal;

not later than ten (10) days after the date of the case's resolution.

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If the utility does not receive notice of an appeal within the time prescribed in this subsection, the utility may begin the planned tree cutting activity, subject to any specifications or limitations reached through the dispute resolution procedures.

(c) Except as provided in section 9 of this chapter, if a utility receives notice of an appeal to the commission within the time prescribed in subsection (b), a utility may not perform any tree cutting activity on the affected property owner's property while the appeal is pending.

Sec. 9. A utility is exempt from the requirements of sections 6, 7, and 8 of this chapter if:

(1) in response to an emergency, the commission acts under IC 8-1-2-113 to temporarily alter, suspend, or amend the policies adopted by the utility under section 5(a) of this chapter; or

(2) the utility determines that an emergency exists that requires the utility to undertake immediate action that includes tree cutting activity in order to:

(A) prevent endangerment to life or property; or

(B) ensure the safety, reliability, or power quality of the utility's electric distribution system;

subject to verification by the commission.

Sec. 10. (a) The commission has the sole authority to hear and determine complaints that a utility has failed to comply with this chapter.

(b) The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. Public and municipally owned utilities are authorized to construct, operate, and maintain their poles, facilities, appliances, and fixtures upon, along, under, and across any of the public roads, highways, and waters outside of municipalities, as long as they do not interfere with the ordinary and normal public use of the roadway, as defined in IC 9-13-2-157. However, the utility shall review its plans with the county executive before locating the pole, facility, appliance, or fixture. **Subject to the requirements of IC 8-1-14.5,** the utility may trim any tree along the road or highway, but may not cut down and remove the tree without the consent of the abutting property owners, unless the cutting or removal is required by rule or order of the Indiana utility regulatory commission. The utility may not locate a pole where it interferes with the ingress or egress from adjoining land.

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1 SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this
2 SECTION, "commission" refers to the Indiana utility regulatory
3 commission created by IC 8-1-1-2.

4 (b) The commission may adopt any rules necessary to
5 implement IC 8-1-14.5, as added by this act, in the same manner as
6 emergency rules are adopted under IC 4-22-2-37.1. Any rules
7 adopted under this SECTION must be adopted not later than
8 September 1, 2008. A rule adopted under this SECTION expires on
9 the earlier of:

10 (1) the date the rule is adopted by the authority under
11 IC 4-22-2-24 through IC 4-22-2-36; or

12 (2) January 1, 2010.

13 (c) This SECTION expires January 1, 2010.

14 SECTION 4. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Young R be removed as author of Senate Bill 243 and that Senator Breaux be substituted therefor.

YOUNG R

 COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 243, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Utilities and Regulatory Affairs.

(Reference is to SB243 as introduced.)

LONG, Chairperson

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